

CHAPTER 11 - COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

11.1 OVERVIEW

All Federally funded projects must comply with the **National Environmental Policy Act** (NEPA). Projects converted to federal funds from other fund sources may need to be evaluated for Federal-Aid funding eligibility and NEPA compliance. The Local Agency must be well versed with Department's [Project Development and Environment \(PD&E\) Manual \(Topic No. 650-000-001\)](#) and specifically, **Part 1, Chapter 2, Environmental Class of Action Determination**, which determines the level of documentation required under NEPA. The preparation of NEPA documents is described in detail in **Part 1** of the **PD&E Manual**. At least one Local Agency representative should have PD&E training as offered by Department. This training is available to Local Agencies on a space-available basis. Local Agencies can contact the District LAP Administrator or Environmental Administrator to determine when this training is available and how the agency may register for it.

Many LAP projects are determined by the Department to be a Type 1 Categorical Exclusion or Programmatic Categorical Exclusion (in accordance with the **Part 1, Chapter 2** of the **PD&E Manual**), but this Chapter identifies requirements for all project Class of Action determinations. Since the Department already maintains a comprehensive **PD&E Manual** detailing the steps involved for NEPA compliance, the purpose of this **LAP Manual Chapter** is to provide basic information on the processes that may be required on a LAP project and when a Local Agency should seek additional information from the **PD&E Manual**.

11.2 EFFICIENT TRANSPORTATION DECISION MAKING

As part of the planning and programming of Federal-Aid projects, qualifying projects complete an environmental screening and interagency review as part of the Department's Efficient Transportation Decision Making (ETDM) process (see the [ETDM Manual Topic No. 650-000-002](#)). ETDM provides information used to aid in developing and focusing the project scope for the NEPA document. The decision of whether a project is screened in ETDM is based on a qualifying project type (**ETDM Manual Chapter 2, Section 2.3.1**), and the conditions illustrated in the ETDM Programming Screen Matrix in **Table 2.2 in ETDM Manual Chapter 2, Section 2.3.1**. The screening of qualifying projects provides

sufficient information to support agreement on a Class of Action (COA) determination by the Department and the FHWA.

The Department, in consultation with FHWA, is responsible for determining a project COA. Ultimately, the COA is approved by FHWA. A Local Agency cannot make the COA determination. The District ETDM Coordinator must enter the proposed COA into the EST for FHWA approval. The District administers the screening event on behalf of the Local Agency and completes the ETDM process for qualifying projects.

Planning activities that take place before the NEPA process (e.g., ETDM process and Alternative Corridor Evaluation process) can be used to narrow the NEPA scope. The Department has these procedures established in the **ETDM** and **PD&E Manuals** that link planning and the NEPA process. If the Local Agency intends to perform planning activities and intends to seek adoption into the NEPA process, then it should coordinate with the Department as early as possible to ensure that process and documentation are conducted appropriately.

11.3 PROJECT DEVELOPMENT AND ENVIRONMENT

The NEPA process requires an assessment of the environmental effects of federal actions. The environmental review process ensures consideration of effects to the human, natural, and physical environments. Furthermore, it informs and involves citizens, documents the avoidance, minimization and for unavoidable impacts mitigation of project impacts, and documents informed decisions. Issues such as staging, off-site activities, required permits, pond siting, footprint of construction, etc. are assessed. All applicants for Federal funding must document the impacts of a proposed action through one of the following COAs: Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). The level of documentation required for each COA is described in **Part 1** of the **PD&E Manual**.

The Department is responsible for review, quality assurance, and the administrative processing of NEPA documents. The administrative process may require FHWA to review and approve documents, including reevaluations. This review depends on the COA according to **Parts 1** and **2** of the Department's **PD&E Manual**. The Department may certify the Local Agency to prepare portions of the NEPA documents, but this will be determined on a case by case basis. The District Environmental Administrator prepares and signs the [Status of Environmental Certification form](#) for all COAs.

A project cannot be submitted for Federal Authorization for construction without an executed [Status of Environmental Certification form](#) attached. The form must be submitted within one year of signature date by the District or FHWA, or it must be

resubmitted for evaluation.

The Final Design phase cannot be initiated until the NEPA process is complete. If a Local Agency intends to advance preliminary engineering activities, then it must coordinate with the Department to ensure compliance with FHWA requirements as described in **Part 1, Chapter 4** of the **PD&E Manual**.

For projects determined by the Department to be a Type 1 Categorical Exclusion or Programmatic Categorical Exclusion (in accordance with the **Part 1, Chapter 2** of the **PD&E Manual**), NEPA may occur concurrent with Design activities, but must be concluded prior to advancing to the right of way or construction phase, and must be coordinated with the Department.

11.4 LOCAL AGENCY RESPONSIBILITIES

When the Class of Action is determined by FHWA or the Department to be a Type 1 Categorical Exclusion or Programmatic Categorical Exclusion, the Local Agency is responsible for conducting environmental analysis, obtaining permits, preparing the NEPA documentation and coordinating with Department staff. The requirements for the environmental and engineering analysis are described in the **PD&E Manual**. Requirements may include, but are not limited to providing the Department assistance with cultural resource assessments, State Historic Preservation Office reviews, Contamination Assessments, Threatened and Endangered Species Surveys, etc. The District LAP Administrator, in consultation with the District Environmental Administrator, will coordinate with and obtain needed approvals from FHWA.

11.5 RESOURCES

[Project Development and Environment \(PD&E\) Topic No. 650-000-001](#)

[ETDM Manual Topic No. 650-000-002](#)

Sample [Status of Environmental Certification form](#)